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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,640	02/27/2004	Steven F. Burson	01-7119	7216

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EXAMINER

FAULK, DEVONA E

ART UNIT PAPER NUMBER

2644

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/788,640

Applicant(s)

BURSON, STEVEN F.

Examiner

Devona E. Faulk

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 3/1/2005 have been fully considered but they are not persuasive. The applicant essentially asserts that prior art Scott voice tube is not kink-resistant. The applicant asserts, on page 3, that kink resistance is such that the lumen or passageway retains its cross-sectional shape and sized even when bent to a desired shape. The applicant further asserts, on page 4, that kink resistance may be provided in a variety of ways such as those describe in the specification in paragraph 0024. Paragraph 0024 states that one method of providing a kink resistant voice tube is for the tube to be a flexible tube with a metallic stiffening member. Scott's voice tube (16) includes 16a, 16 b, 16c where 16a is the flexible portion, 16b is a stainless steel or another suitably rigid material (column 3, lines 15-25). The examiner cited this passage in her previous rejection. The examiner is maintaining her rejection that Scott's voice tube is inherently kink-resistant.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1,5,6,8,9,13,15,18,19** are rejected under 35 U.S.C. 102(b) as being anticipated by Scott et al. (U.S. Patent 4,917,504).

Regarding **claim 1**, Scott discloses a headset (Figure 1) comprising an audio receiver (14; Figure 1);

a headset body to which the audio receiver is coupled (12; Figure 1), the headset body being configured to position the audio receiver near a headset user's ear;

a microphone located within one of the audio receiver and the headset body (24; column 3, lines 55-65);

a flexible voice tube coupled to one of the headset body and the audio receiver, the flexible voice tube (16, 16a) defining a lumen therein extending between an open end of the flexible voice tube and the microphone, the flexible voice tube being bendable into a curvilinear operative shape and position while preventing kinking of the flexible voice tube, the flexible voice tube generally retaining its curvilinear operative shape and position throughout its operative use until further adjustment (column 3, lines 7-30).

All elements of **claim 5** (column 3, lines 19-25) and **claim 6** (12, Figure 1) are comprehended by the rejection of claim 1.

Regarding **claim 8**, Scott discloses

a voice tube (16; Figure 1) comprising a kink-resistant flexible tubular member (16; Figure 1; column 3, lines 10-25) having an open end and an opposing end, the opposing end being configured to be coupled to a microphone, the flexible tubular member being configured to be bendable into a curvilinear operative shape and preventing formation of kinks in the flexible tubular (inherent), the flexible tubular

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member being configured to generally retain its curvilinear operative shape throughout its operative use until further adjustment is made thereto (column 3, lines 10-24);

and a lumen defined by the flexible tubular member extending between the open end and the opposing end for acoustic transmission between the open end and the microphone. Lumen is defined as the inner open space or cavity of a tubular organ. Lumen is inherent because the 16a and 16b are telescoping portions of the tube (column 3, lines 14-16). Flexible is defined as capable of being bent repeatedly without injury or damage.

All elements of **claim 9** and **claim 13** (column 3, lines 19-25) are comprehended by the rejection of claim 8.

Regarding **claim 15**, Scott discloses a headset (Figure 1) comprising an audio receiver (14; Figure 1);

a headset body to which the audio receiver is coupled (12; Figure 1), the headset body being configured to position the audio receiver near a headset user's ear;

a microphone located within one of the audio receiver and the headset body (24; column 3, lines 55-65);

acoustic transmission means for acoustic transmission between an open end thereof and the microphone via a lumen defined by said acoustic transmission means extending between the pen end and the microphone (16,16a,16b), said acoustic transmission means being kink-resistant and adjustable into a curvilinear operative shape and generally retaining the curvilinear operative shape until further adjustment is made thereto (16; Figure 1; column 3, lines 10-26). Lumen is inherent because the 16a

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and 16b are telescoping portions of the tube (column 3, lines 14-16). Flexible is defined as capable of being bent repeatedly without injury or damage.

All elements of **claim 18** (column 3, lines 19-25) and 19 (12, Figure 1) are comprehended by the rejection claim 15.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 2,7,10,14,16,20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott et al. (U.S. Patent 4,917,504) in view of Pallai (U.S. Patent Application 2001/003629).

Claims 2, 10 and 16 claim the headset of claim of 1, the voice tube of claim 8, and the headset of claim 15 respectively, wherein the flexible voice tube is a spiral wound stainless steel flexible gooseneck tubing. As stated above apropos of claims 1,8, and 15, Scott meets all elements of those claims. Therefore, Scott meets all elements of claims 2,10, and 16 with the exception of the claimed matter. Pallai discloses a voice tube comprising a metal coil spring (paragraph 0032). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use Pallai's concept of a spiral wound metallic wire in order to maintain a desired position.

Claims 7,14 and 20 claim the headset of claim of 1, the voice tube of claim 8, and the headset of claim 15 respectively, wherein the curvilinear operative shape and

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position is between a bendable limit and an unbent position, the bendable limit of the flexible voice tube being a point at which further bending of the flexible voice tube causes at least one of spring back to approximately the bendable limit, damage to the flexible voice tube, and permanent deformation of the flexible voice tube, and permanent deformation of the flexible voice tube. As stated above apropos of claims 1,8, and 15, Scott meets all elements of those claims. Therefore, Scott meets all elements of claims 7,14 and 20 with the exception of the claimed matter. Pallai discloses a voice tube comprising a metal coil spring (paragraph 0032). A spring would obviously have a bendable limit. Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use Pallai's concept of a spiral wound metallic wire in order to maintain a desired position and in order to better enable bending of a structure without damaging the structure.

6. **Claims 3 and 11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott et al. (U.S. Patent 4,917,504) in view of Pallai (U.S. Patent Application 2001/0036291) in further view of Sawada et al. (U.S. Patent 5,350,638).

Claims 3 and 11 claim the headset of claim of 1 and the voice tube of claim 8 respectively. As stated above apropos of claims 1,8, and 15, Scott meets all elements of those claims. Therefore, Scott meets all elements of claims 3 and 11 with the exception of the claimed matter. Pallai discloses a voice tube comprising a metal coil spring (paragraph 0032). Sawada discloses the concept of copper wiring wrapped in stainless steel (column 5, lines 6-15). Thus it would have been obvious to one of

ordinary skill in the art at the time of the invention to use Sawada's concept of copper wiring wrapped in stainless steel in order to provide better flexibility to the tubing.

7. **Claims 4, 12 and 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott et al. (U.S. Patent 4,917,504) in view of Wilcox (U.S. Patent 4,771,454).

Claims 4,12 and 17 claim the headset of claim of 1, the voice tube of claim 8, and the headset of claim 15 respectively, wherein the flexible voice tube includes a shrink tubing over a stainless steel flexible tubing (claims 4,12) and wherein the acoustic transmission means is selected from the group consisting of a spiral wound flexible gooseneck tubing, the gooseneck voice tube including copper wiring wrapped in stainless steel wire; and a shrink tubing over a stainless steel flexible tubing (claim 17). As stated above apropos of claims 1,8, and 15, Scott meets all elements of those claims. Therefore, Scott meets all elements of claims 4,12 and 17 with the exception of the claimed shrink tubing. Scott discloses steel tubing (16b). Wilcox discloses the concept of providing shrink tubing (206; column 7, lines 45-50; Figure 2) over another some other tubing. Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use Wilcox's concept of providing shrink tubing as claimed in order to better secure the tubing.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devona E. Faulk whose telephone number is 571-272-7515. The examiner can normally be reached on 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. On July 15, 2005 the central fax number will change to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



VIVIAN CHIN
SUPERVISORY PATENT EXAMINER
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